Filed 11/4/10 Valera v. Costco Wholesale Corp. CA2/2

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

JUAN ISAAC VALERA, Plaintiff and Respondent, v. COSTCO WHOLESALE CORPORATION, Defendant and Appellant.	B215631 (Los Angeles County Super. Ct. No. BC361000)

APPEAL from a judgment and orders of the Superior Court of Los Angeles County. Maureen Duffy-Lewis, Judge. Affirmed.

Seyfarth Shaw, Kenwood C. Youmans, David D. Kadue, and John A. Van Hook for Defendant and Appellant.

Law Offices of Leo James Terrell and Leo James Terrell for Plaintiff and Respondent.

Defendant and appellant Costco Wholesale Corporation (Costco) appeals from the judgment entered in favor of plaintiff and respondent Juan Isaac Valera (Valera), and from the orders denying Costco's motion for judgment notwithstanding the verdict (JNOV) and its motion for a new trial and remittitur after a jury returned a special verdict in favor of Valera on his claim for retaliation in violation of the Fair Employment and Housing Act (Gov. Code, § 12940 et seq.)[1] (FEHA) and awarded him $422,359 in damages. Costco also appeals from the trial court's award of $471,240 in attorney fees and $39,578 in costs to Valera.

We affirm the judgment and the orders denying the motion for JNOV and the motion for a new trial. We also affirm the award of costs and attorney fees.

BACKGROUND

Valera is an HIV positive homosexual man who worked at Costco's Inglewood retail warehouse from 1986 until April 2006. During his employment with Costco, Valera was promoted to the position of Photo Lab Manager and earned an annual salary of $56,000.

John Weaver (Weaver) was the general manager of Costco's Inglewood warehouse in May 2005. As the general manager, Weaver was responsible for overseeing warehouse operations, including investigating complaints made by employees and implementing employee disciplinary measures. Weaver was also responsible for supervising approximately 20 managers, including Valera.

Valera, Weaver, and 10 other managers were attending a meeting in the fall of 2005. When Weaver heard that one of the managers was being transferred to Texas, he stood up and remarked, "There's nothing in Texas but steers and queers." Weaver's comment upset Valera because he perceived it as a derogatory reference to homosexuals. Valera began to feel stressed and insecure about his job. To alleviate his work related stress, Valera took a leave of absence at the recommendation of his doctor, Jonathan Reitman (Dr. Reitman).

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[1] All further statutory references are to the Government Code, unless stated otherwise.

Valera returned to work in April of 2006 and spoke with assistant manager Carl Barrio (Barrio), who knew that Valera was gay and HIV positive. Valera told Barrio about Weaver's "steers and queers" remark and asked for protection from Weaver. In response, Barrio told Valera that he would have to disclose the incident to the other managers. Barrio's response caused Valera to experience more stress and he became fearful of losing his job.

The following day, Barrio advised Valera that his duties had been expanded to include supervising the warehouse cashiers in addition to supervising the employees in the photo lab. Valera's workload within the photo department also increased as the result of a workforce reduction, and he began working additional photo department shifts as well. The increased workload took a physical and emotional toll on Valera, and a week later he took a leave of absence at the recommendation of Dr. Reitman.

While he was out on leave, Valera received a telephone call from Barrio informing him that he had been demoted to a cashier position and that another employee named Elaine Ponce (Ponce) had replaced him as manager of the photo department. After the demotion, Valera's annual salary was reduced by $20,000.

Valera returned to work with a note from Dr. Reitman stating that he needed to be seated for 10 minutes each hour. Neither Ponce nor any other Costco manager accommodated Valera's request to be seated periodically during his work shifts.

On May 2, 2006, Valera observed Ponce and two other supervisors, Carlos Taylor (Taylor) and Kenneth Ellison (Ellison), videotaping a skit for an in-house management training program. Because Valera had previously edited videotapes for Ponce, he offered to help edit the tape. Ponce agreed, and Valera took the videotape home to edit. Valera viewed the videotape for the first time at his home that evening.

In the videotaped skit, Ellison's role was that of an employee asking his manager for time off. Taylor's role was the manager receiving Ellison's request. In improvised dialogue, Ellison asked Taylor for a day off in order to attend the "bar mitzvah" of his "Auntie Juan," a "transsexual." At the time the videotape was made, Ellison was

Valera's immediate supervisor and Valera was the only employee named Juan who worked as a cashier in the Inglewood warehouse.

Valera perceived Ellison's comments in the videotape about "Auntie Juan" as an offensive reference to him. He was both upset and offended by the videotape. Valera returned the unedited videotape to Ponce the following day. He also provided a copy of the videotape to Weaver, lodged a complaint about the employees who had made the video, and asked for an investigation. Valera left for the day and went to see Dr. Reitman, who placed him on a leave of absence. Valera did not return to work thereafter.

Neither Weaver nor anyone else from Costco ever contacted Valera about his complaint concerning the videotape. In December 2006, Valera received a letter advising him that his health benefits had been terminated in accordance with a company policy that limited medical benefits to the first six months of an employee's leave of absence.

PROCEDURAL HISTORY

Valera filed separate complaints with the Department of Fair Employment and Housing (DFEH) in 2006 and 2007, alleging harassment, discrimination, and retaliation in violation of FEHA. After obtaining right-to-sue notices from the DFEH, Valera filed the instant action against Costco.[2] In the operative second amended complaint, Valera alleged causes of action for harassment, sexual orientation and disability discrimination, and retaliation in violation of FEHA, and discrimination in violation of the California Family Rights Act.

Costco moved for summary judgment, arguing that Valera could not establish the elements of any of the asserted causes of action. The trial court denied the motion, and the case proceeded to trial.

At the trial, both sides presented documentary evidence and the testimony of several witnesses. The videotaped "Auntie Juan" skit was admitted into evidence without objection. After closing argument, the parties stipulated to a special verdict form that

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[2] Valera also sued Weaver, Taylor, Ellison, and Ponce, but subsequently dismissed the individual defendants from the action.

encompassed three causes of action -- sexual orientation discrimination, retaliation, and failure to provide reasonable accommodation.

While the jury was deliberating, they submitted two questions to the trial court. The first question, submitted on December 2, 2008, purportedly concerned the employees who participated in making the videotape and whether they held managerial positions. There is no record, however, of the substance of the jury's question or the trial court's response. The second question, submitted on December 3, 2008, indicated that the jury had answered all of the questions on the special verdict form except question No. 19, the last question on the verdict form and one pertaining to punitive damages. The jury asked what effect their inability to reach consensus on that last question would have on the verdict. After consulting with counsel, the trial court responded by instructing the jury that "failure to reach a verdict on No. 19 would not affect any decisions reached on 1 through 17" of the special verdict form.

Shortly after the trial court's response to their December 3, 2008 question, the jury reached a verdict in favor of Valera on his retaliation claim only. They awarded him $120,674 in economic damages and $301,685 in noneconomic damages. Judgment was entered on January 29, 2009.

Costco filed a motion for JNOV and a motion for a new trial and remittitur, and the trial court denied both motions. Valera filed a motion for attorney fees in the amount of $471,240, with a lodestar multiplier of 2.5, and costs of $39,578. Costco opposed the attorney fee motion and filed a separate motion to tax costs. After hearing argument from the parties, the trial court awarded Valera the amount fees of requested, without the multiplier, as well as the $39,578 in costs requested. This appeal followed.

DISCUSSION

I. Costco's Contentions

Costco contends the trial court erred by denying its motion for JNOV and its motion for a new trial and remittitur because there was no substantial evidence to support the jury's verdict or the damages award. Costco further contends the trial court committed prejudicial error by refusing a request to further instruct the jury in response to

the question they submitted to the trial court during deliberations on December 2, 2008. Finally, Costco challenges the award of attorney fees and costs on the grounds that Valera failed to exhaust his administrative remedies, the trial court failed to provide a reasoned explanation of the award, and the amounts awarded were excessive.

II. JNOV

A. Standard of Review

"A motion for judgment notwithstanding the verdict may be granted only if it appears from the evidence, viewed in the light most favorable to the party securing the verdict, that there is no substantial evidence in support. [Citation.] [¶] The moving party may appeal from the judgment or from the order denying the motion for judgment notwithstanding the verdict, or both. [Citation.] As in the trial court, the standard of review is whether any substantial evidence--contradicted or uncontradicted--supports the jury's conclusion. [Citations.]" (*Sweatman v. Department of Veterans Affairs* (2001) 25 Cal.4th 62, 68.)

B. FEHA Retaliation Claim

To establish a prima facie case of retaliation in violation of FEHA, a plaintiff must show that he engaged in a protected activity, that his employer subjected him to an adverse employment action, and that a causal link exists between the protected activity and the adverse action. (*Fisher v. San Pedro Peninsula Hosp*. (1989) 214 Cal.App.3d 590, 614 (*Fisher*).) As we discuss, there is substantial evidence in the record to support the elements of Valera's FEHA retaliation claim.

1. Protected Activity

Section 12940, provides the definition of a protected activity: "It shall be an unlawful employment practice . . . : [¶] . . . [¶] (h) For any employer, labor organization, employment agency, or person to discharge, expel, or otherwise discriminate against any person because the person has opposed any practices forbidden under this part or because the person has filed a complaint, testified, or assisted in any proceeding under this part."

An employee's conduct may constitute protected activity under the statute not only when the employee complains of conduct that is ultimately determined to be

unlawful under FEHA, but also when the employee complains of conduct that he or she reasonably and in good faith believes to be unlawful, whether or not that conduct is ultimately found to violate FEHA. (*Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1043 (*Yanowitz*).) "It is well established that a retaliation claim may be brought by an employee who has complained of or opposed conduct that the employee reasonably believes to be discriminatory, even when a court later determines the conduct was not actually prohibited by the FEHA." (*Ibid*.)

Costco claims that Valera could not have reasonably believed he was opposing an unlawful employment practice by complaining about Weaver's "steers and queers" remark because Weaver's comment was not actionable harassment or discrimination as a matter of law. Whether Weaver's comment was itself actionable harassment or discrimination under FEHA is not the appropriate standard. "'[I]t is good faith and reasonableness, not the fact of discrimination, that is the critical inquiry in a retaliation case.'" (*Yanowitz, supra*, 36 Cal.4th at p. 1043, fn. 4, quoting *Rucker v. Higher Educational Aids Bd*. (7th Cir.1982) 669 F.2d 1179, 1182, italics omitted.) "It has long been the law that whether an employee's formal or informal complaint is well founded is *immaterial* to a FEHA retaliation claim." (*George v. California Unemployment Ins. Appeals Bd.* (2009) 179 Cal.App.4th 1475, 1490.) "Strong policy considerations support this rule. Employees often are legally unsophisticated and will not be in a position to make an informed judgment as to whether a particular practice or conduct *actually* violates the governing antidiscrimination statute. A rule that permits an employer to retaliate against an employee with impunity whenever the employee's reasonable belief turns out to be incorrect would significantly deter employees from opposing conduct they believe to be discriminatory." (*Yanowitz, supra*, at p. 1043.)

Costco asks that we countermand, as a matter of law, the jury's finding that Valera complained about an unlawful employment practice. The reasonableness of Valera's belief is a credibility question that cannot be determined as a matter of law but must be resolved by the trier of fact. (*Flait v. North American Watch Corp.* (1992) 3 Cal.App.4th 467, 477.) The jury in this case weighed the evidence and concluded that Valera

complained about alleged harassment, discrimination or retaliation. Substantial evidence supports the jury's determination. Costco's employee agreement contains an anti-harassment policy that prohibits harassment based upon any protected status, including sexual orientation. The policy lists examples of prohibited conduct, including epithets, slurs, and negative stereotyping and requires employees who believe they are being subjected to such conduct to report the matter to a manager. As an employee of Costco for nearly 20 years, plaintiff was familiar with the company's employee agreement and its anti-harassment and anti-discrimination policy. The jury determined that plaintiff, as a gay man, could have reasonably and in good faith believed Weaver's comment about "steers and queers" to be discriminatory. Substantial evidence supports the finding that Valera engaged in protected activity.

2. Adverse Employment Action

An employment action is adverse if it "had substantial and material adverse effect on the terms and conditions of the plaintiff's employment." (*Pinero v. Specialty Restaurants Corp.* (2005) 130 Cal.App.4th 635, 641.) Adverse employment actions sufficiently substantial to support a FEHA retaliation claim include "termination of employment, a demotion evidenced by a decrease in wage or salary, a less distinguished title, a material loss of benefits, [or] significantly diminished material responsibilities." (*Thomas v. Department of Corrections* (2000) 77 Cal.App.4th 507, 511-512 (*Thomas*).)

Substantial evidence supports the jury's determination that Valera suffered an adverse employment action. Valera testified that his workload increased substantially the day after he complained about Weaver's "steers and queers" comment. A week later, he was demoted from his position as photo lab manager to a warehouse cashier and had his annual salary reduced by $20,000. Valera's demotion and reduction in salary is sufficient to support the jury's finding that he suffered an adverse employment action. (*Thomas, supra,* 77 Cal.App.4th at pp. 511-512.)

Costco concedes that Valera's change in status from photo manager to cashier was significant enough to constitute an adverse employment action but argues that the evidence does not support Valera's claim that he was demoted. Costco maintains that

Valera voluntarily gave up his position as a manager in order to avoid stress, and cites Valera's deposition testimony in support of its position. The jury considered this conflicting evidence and found in Valera's favor. Under the substantial evidence standard, an appellate court cannot reweigh the evidence, second-guess credibility determinations made by the jury, or resolve conflicts in the evidence. (*Beck Development Co. v. Southern Pacific Transportation Co*. (1996) 44 Cal.App.4th 1160, 1203-1204.) Substantial evidence supports the finding that Valera was subjected to an adverse employment action.

3. Nexus Between Adverse Employment Action and Protected Activity

Under FEHA, the existence of a causal link between protected activity and an adverse employment action may be proved by showing that the employer was aware of the protected activity, and that the adverse action followed within a relatively short time thereafter. (*Fisher*, 214 Cal.App.3d at p. 615.) In arguing against the existence of a causal link between Valera's complaint about Weaver and any adverse employment action, Costco focuses exclusively on the termination of Valera's medical benefits and ignores the evidence of other adverse employment actions, such as his change in employment status and reduction in salary. This narrow perspective was not shared by the jury.

There was evidence of both knowledge of protected activity and proximity in time between that activity and the adverse employment actions. Valera testified that he complained to Barrio about Weaver's "steers and queers" comment and sought protection from Weaver. The following day, Valera's workload increased significantly. A week later, Barrio informed Valera that he was being demoted. After his demotion, Valera's salary was reduced by $20,000. Substantial evidence supports the existence of a causal link between protected activity and the adverse employment action.

III. Motion for New Trial

A. Standard of Review

Our Supreme Court has articulated the standard of review for an order denying a new trial motion as follows: "[A] trial judge is accorded a wide discretion in ruling on a

motion for new trial and . . . the exercise of this discretion is given great deference on appeal. . . . However, we are also mindful of the rule that on an appeal from the judgment it is our duty to review all rulings and proceedings involving the merits or affecting the judgment as substantially affecting the rights of a party . . . , including an order denying a new trial. In our review of such order *denying* a new trial, as distinguished from an order *granting* a new trial, we must fulfill our obligation of reviewing the entire record, including the evidence, so as to make an independent determination as to whether the error is prejudicial. [Citations.]" (*City of Los Angeles v. Decker* (1977) 18 Cal.3d 860, 871-872.) Applying this standard, we conclude the trial court properly determined that Costco failed to establish good cause for a new trial.

B. Evidence supporting the verdict

Costco contends a new trial was warranted because the weight of the evidence does not support the verdict. As discussed, there is substantial evidence in the record to support the jury's verdict on Valera's FEHA retaliation claim. The trial court did not err denying Costco's motion for a new trial on that basis.

C. Jury confusion

Costco claims that while the jury was deliberating, they submitted a question asking if Ponce, Taylor, and Ellison, the three employees involved in the video, were managing agents of Costco. Costco maintains that the question reflects confusion on the part of the jury as to whether the video itself could serve as a basis for liability and that the trial court had a duty to clarify the jury instructions and the verdict form.

There is no evidence that the jury asked whether the employees in the video were managing agents of Costco, nor is there any evidence of jury confusion. The court's minute orders dated December 2, 2008 and December 3, 2008, show that the jury submitted two questions during its deliberations -- one on December 2, and a second on December 3. The question submitted on December 2 is not part of the record, as there is no reporter's transcript of the proceedings that day. The minute order for that day simply states that the trial court provided a response to the jury, after conferring with counsel. The question submitted on December 3 indicated that the jury had answered all questions

on the special verdict form except the last one, question No. 19, which concerned punitive damages.[3] The jury asked how their failure to reach a decision on that last question would affect their decisions on the other questions. After consulting with counsel, the trial court prepared a response instructing the jury that "failure to reach a verdict on No. 19 would not affect any decisions reached on 1 through 17" of the special verdict form. Counsel for Costco then expressed concern that the jury did not understand that Valera had not pursued a harassment claim and argued that the video had "no relevance at all" to the retaliation, sexual orientation discrimination, and failure to accommodate claims they were to decide. Costco's counsel asked the trial court to instruct the jury that only three claims were being adjudicated, that the harassment claim was not, and that the video was not to be considered in the jury's deliberations. The trial court rejected the request, noting that Costco's counsel had approved the verdict form and that the jury had already indicated they had reached a verdict. Shortly after the trial court responded to the jury's inquiry regarding question No. 19, the jury returned a verdict that left question No. 19 on the verdict form unanswered.

There is no evidence that the jury was confused about the nature of the claims submitted to them. At the time Costco's counsel sought to provide the jury with further instruction, the jury had indicated they had reached a verdict on all claims except the punitive damages claim. The trial court did not err by denying Costco's request for further instruction.

D. Damages

Code of Civil Procedure section 657 states that "[a] new trial shall not be granted upon . . . the ground of excessive or inadequate damages, unless after weighing the

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3 Question No. 19 on the special verdict form stated: "Do you find by clear and convincing evidence that one or more officers, directors, or managing agents of Costco acting in a corporate capacity engaged in conduct toward Juan Valera constituting malice or oppression?" The jury's question submitted on December 3 stated: "We have reached decisions on all questions except question No. 19. What is the effect on those decisions if we fail to reach a nine vote majority on No. 19?" The jury reached its verdict on December 3 without answering question No. 19.

evidence the court is convinced from the entire record, including reasonable inferences therefrom, that the court or jury clearly should have reached a different verdict or decision." An appellate court may not disturb a judgment on the ground of inadequacy of damages unless the amount of the award is not supported by substantial evidence in the record and the verdict is a clear abuse of the jury's discretion. (*Sherwood v. Rossini* (1968) 264 Cal.App.2d 926, 931-932.)

1. Economic Damages

Substantial evidence supports the jury's $120,674 economic damages award. Valera's forensic economic expert, Dr. Merati, presented his calculation of Valera's economic loss and testified about the information on which those calculations were based. Costco contends Dr. Merati's calculations were based on the improper assumption that Valera's economic loss began to accrue on January 1, 2006, because the evidence showed that no retaliatory act occurred until April 2006. This contention is not supported by the record. Dr. Merati expressly stated that he did not use January 1, 2006 as a date of loss. He explained that he calculated Valera's economic loss in 2006 by estimating what Valera would have earned during that year and then subtracting his actual earnings from that amount. Dr. Merati's explanation also defeats Costco's claim that Dr. Merati's calculations improperly included economic loss during periods when Valera was compensated by Costco.

Costco argues that the economic damages award improperly compensates Valera for loss occurring after May 2006, because Valera took a "voluntary" leave of absence at that time. The record shows, however, that Valera's doctor placed him on a medical leave of absence in April 2006 because of work-related stress. Substantial evidence supports the jury's award of economic damages.

2. Noneconomic Damages

Costco contends the trial court abused its discretion by failing to set aside the jury's award of $301,685 in emotional distress damages because there was no evidence of retaliation-caused distress, the jury's verdict was based on passion or prejudice, and the

amount of emotional distress damages awarded was disproportionate to Valera's economic loss. The record discloses no abuse of discretion.

There is substantial evidence that Valera suffered emotional distress as the result of retaliatory acts. Valera testified that after seeking protection from Weaver, his workload increased, he was demoted, and his requests for workplace accommodations were ignored. He further testified that as a result, he experienced work related stress. Valera's doctor testified that Valera's work related stress exacerbated his HIV related ailments. There was substantial evidence of a causal relationship between the retaliatory acts and Valera's emotional distress.

There is no evidence to support Costco's claim that the jury's award of emotional distress damages was motivated by passion or prejudice. That Valera was a sympathetic plaintiff is an insufficient basis for concluding that the jury's damages award was improper. Although Costco argues that the jury's question concerning the participants in the "Auntie Juan" video reflected prejudice against Costco, the jury's verdict, which included no punitive damages award, indicates otherwise.

Costco's argument that the amount of emotional distress damages awarded was disproportionate to the amount of economic loss is not a basis for reversal. Costco bases this argument on the assumption that Valera was entitled to no more than $833 in economic damages, not the $120,674 in economic damages awarded by the jury. The $301,685 in emotional distress damages awarded by the jury was not so grossly excessive or disproportionate to the amount of economic damages as to be reasonably imputed only to passion or prejudice by the jury. (*Weller v. American Broadcasting Companies, Inc.* (1991) 232 Cal.App.3d 991, 1011-1012 [appellate court may not interfere with damages award unless the verdict is so large that, at first blush, it shocks the conscience and suggests passion, prejudice or corruption on the part of the jury].)

IV. Attorney Fees

Costco contends the attorney fee award should be reversed because Valera failed to exhaust his administrative remedies, the award improperly included fees incurred on Valera's unsuccessful claims, the trial court provided no reasoned explanation for the

amount awarded, and the amount awarded was unsupported and unreasonable. None of these contentions have merit.

A. Standard of Review

FEHA provides that a trial court, "in its discretion, may award to the prevailing party reasonable attorney's fees and costs." (§ 12965, subd. (b).) We review the trial court's award of attorney fees under FEHA for abuse of discretion. (*Vo v. Las Virgenes Municipal Water Dist.* (2000) 79 Cal.App.4th 440, 445.)

B. Failure to Exhaust Administrative Remedies

Costco's argument that Valera was not entitled to an award of attorney fees under FEHA because he failed to exhaust his administrative remedies borders on the frivolous. Costco concedes Valera filed two complaints with the DFEH alleging retaliation in violation of FEHA, but claims that those complaints were insufficient because they did not allege the specific retaliatory acts presented to the jury. A DFEH complaint "is not intended as a limiting device" with respect to a subsequent civil action. (*Watson v. Department of Rehabilitation* (1989) 212 Cal.App.3d 1271, 1288.) Incidents not described in a DFEH complaint can be included in a subsequently filed lawsuit if the allegations in the subsequent civil action are "like or reasonably related to" those specified in the DFEH charge. (*Soldinger v. Northwest Airlines, Inc.* (1996) 51 Cal.App.4th 345, 381-382.) Here, Valera alleged acts of retaliation in both his DFEH complaints and in his subsequent lawsuit. There was no failure to exhaust administrative remedies.

C. Fees Incurred on Unsuccessful Claims

A trial court may in its discretion reduce an attorney fee award under FEHA when the plaintiff does not prevail on all of his claims. (*Greene v. Dillingham Construction N.A., Inc.* (2002) 101 Cal.App.4th 418, 422.) The plaintiff's attorney fees need not be reduced, however, "when incurred for representation on an issue common to both a cause of action in which fees are proper and one in which they are not allowed." (*Reynolds Metals Co. v. Alperson* (1979) 25 Cal.3d 124, 129-130.)

In the instant case, Valera's causes of action for discrimination, retaliation, and failure to provide reasonable accommodation were all based the same set of factual circumstances -- Weaver's comment, Valera's increased workload and subsequent demotion and reduction in salary, and stress-induced physical and emotional harm. On this record, we cannot conclude that the trial court abused its discretion by failing to apportion Valera's attorney fees among the successful and unsuccessful claims.

D. Trial Court's Explanation

Costco contends the attorney fee order must be reversed because "it lacks demonstrable analysis of the fees awarded." The transcript of the hearing on the attorney fee motion reflects the trial court's express statement that it reviewed all of the pleadings and documentation relating to the motion, conducted oral argument, and provided an adequate explanation for the conclusions it reached. Costco's claim that it was entitled to a more detailed response is legally unsound. In *Ketchum v. Moses* (2001) 24 Cal.4th 1122 (*Ketchum*), our Supreme Court approved the lodestar method for calculating attorney fee awards under Code of Civil Procedure section 425.16 and addressed and rejected the appellant's claim that the trial court "merely 'rubber stamped' the [attorney fee] request without an independent assessment." (*Ketchum, supra*, at p. 1140.) The record showed that the trial court had reviewed the extensive documentation pertaining to the fee request and had entertained extensive oral argument on the matter. The court in *Ketchum* concluded that there was "no reason to doubt that the superior court conducted an independent assessment of the evidence presented." (*Ibid.*, fn. omitted.)

The court in *Ketchum* also rejected the appellant's related argument that the superior court erred by failing to provide a "reasoned explanation" for denying objections to specific items in the fee request, concluding that the trial court had no obligation to issue a statement of decision in connection with the fee award. (*Ketchum, supra*, 24 Cal.4th at p. 1140.)

Here, as in *Ketchum*, the record shows that the trial court reviewed and independently assessed the evidence presented. A more detailed explanation was not required.

E. Amount of Award

Costco contends the attorney fee and cost award is excessive. It challenges the time spent by Valera's attorneys on various tasks, including responding to discovery and the summary judgment motion, as well as certain specific cost items. These complaints do not warrant reversal under the deferential standard of review applicable here. Costco's disagreement with the trial court's ruling is not a valid ground for reversal. The record discloses no abuse of discretion.

DISPOSITION

The judgment and the orders denying the motion for JNOV and the motion for a new trial are affirmed, as is the award of costs and attorney fees. Valera is awarded his costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
CHAVEZ

We concur:

_____, P. J.
BOREN

_____, J.
ASHMANN-GERST